

STATE OF MICHIGAN  
COURT OF APPEALS

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KEITH NEUMANN,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

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UNPUBLISHED  
December 15, 2015

No. 323513  
Tax Tribunal  
LC No. 14-005844-TT

Before: SAAD, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Petitioner appeals by right an order of the Michigan Tax Tribunal dismissing his appeal of respondent's denial of a principal residence exemption (PRE). The Tribunal dismissed his appeal as untimely pursuant to MCL 205.735a. We affirm.

I. FACTS

In a letter, dated December 13, 2012, respondent denied petitioner's property, parcel number 05003000502180, located at 5601 Fletcher Road, Roscommon, Michigan, a PRE for tax years 2009 through 2012. Respondent stated its reason for denial as: "[t]he parcel did not contain a dwelling owned and occupied by a person(s) as his or her personal residence." In a December 22, 2012 letter addressed to respondent, petitioner stated he disagreed with the PRE denial and requested a formal conference. Respondent acknowledged an "Appeal Received" by letter dated January 30, 2013. In letters addressed to respondent dated February 4, August 10, and November 25, 2013, petitioner attached documents verifying ownership of the property and claiming it his personal residence. Respondent sent a Notice of Assignment to Referee and Informal Conference to petitioner, dated November 4, 2013, by certified mail to petitioner at PO Box 1736, Royal Oak, MI 48068. Petitioner signed the certified receipt November 15, 2013. A telephonic conference was scheduled for December 5, 2013. There is no information in the record as to what transpired during the conference call. Respondent issued its final decision and order by letter on April 30, 2014, addressed to petitioner at PO Box 191, Roscommon, MI 48653. The letter stated that, after reviewing the recommendation of the referee, respondent was denying petitioner's property a PRE for tax years 2009 through 2012. The letter directed petitioner to "file [any] written appeal[s] with the . . . Michigan Tax Tribunal within 35 days of th[e] decision." The bottom of the letter indicated: "**CERTIFIED MAIL—RETURN RECEIPT REQUESTED.**"

In a June 5, 2014 letter to the Tribunal, petitioner stated that he was informed that day by Crawford County Treasurer Joe Wakely of respondent's final order and decision denying a PRE for his property. Petitioner sent his letter certified to the Tribunal with the return address "POB 191 Roscommon MI 48653." The Tribunal responded with a Notice of No Action, entered June 10, 2014. The notice acknowledged receipt of petitioner's appeal letter, but informed petitioner that he was required to file a petition with the appropriate filing fee in order to properly initiate an appeal with the Tribunal. The notice also indicated in bold that, "If there is a date by which the Petition is to be filed and its submission with payment, if required, is made after that date, your Appeal will be dismissed, as the Petition will be considered untimely. See MCL 205.735a." Petitioner filed his tax appeal petition on June 24, 2014. On August 14, 2014, the Tribunal dismissed the petition as untimely under MCL 205.735a(6).

## II. ANALYSIS

Petitioner brings two challenges to the Tribunal's decision on appeal. Both challenges are grounded in procedural due process and neither was preserved for appeal.

### A. EX PARTE COMMUNICATION

Petitioner argues that his procedural due process right to a fair and impartial tribunal was violated when a treasury department representative sent an e-mail to the presiding hearing referee. Petitioner argues that this constituted an improper ex parte communication. We disagree.

We review unpreserved claims of constitutional error for plain error affecting substantial rights. *People v Shafier*, 483 Mich 205, 211; 768 NW2d 305 (2009).

"Review of decisions by the Tax Tribunal is limited." *Michigan Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012). "[F]actual findings are final if they are supported by competent, material, and substantial evidence on the whole record. If the facts are not disputed and fraud is not alleged, . . . review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle." *Id.* at 527-528 (internal citation omitted).

The Michigan and United States Constitutions prevent the government from depriving persons of property without due process of law. Const 1963, art 1, § 17; US Const, Ams V and XIV. Procedural due process dictates that parties are entitled to notice and an opportunity to be heard. *Hughes v Almena Twp*, 284 Mich App 50, 69; 771 NW2d 453 (2009). Improper ex parte communication could violate these notice requirements. See *Maxwell v Dep't of Environmental Quality*, 264 Mich App 567, 573-576; 692 NW2d 68 (2004).

Respondent is an administrative agency whose procedures are governed by the Administrative Procedures Act (APA), MCL 24.201 *et seq.* MCL 24.203(2); MCL 205.721. The APA prohibits agency employees "assigned to make a decision or to make findings of fact and conclusions of law in a contested case [from] . . . communicat[ing] . . . with any person or party" about an issue of fact unless all parties have "notice and opportunity . . . to participate. This prohibition begins at the time of the notice of hearing." MCL 24.282; see generally *Maxwell*, 264 Mich App at 573-576. However, agency members "may communicate with other

members of the agency and may have the . . . advice of the agency staff,” so long as the staff is not “engaged in investigating or prosecuting functions in connection with the case . . . or a factually related case.” MCL 24.282; see generally *Maxwell*, 264 Mich App at 573-575.

Petitioner submitted to this Court a copy of an e-mail dated March 20, 2014, sent from “Burke, Aaron (Treasury)” to referee “Martell, Marie E. (Treasury)” providing information about petitioner’s vehicle registration and driver’s license address. Because the e-mail purports to have been sent after petitioner requested an informal conference, petitioner argues he was deprived an opportunity to respond to the factual allegations in it, MCL 24.282, potentially impacting his due process rights. *Hughes*, 284 Mich App at 69. We disagree.

First, this Court cannot determine whether the communication violated the APA. All the e-mail indicates is that Martell communicated with a person named Aaron Burke, and it can be assumed from the parenthetical “(Treasury)” included on the “From” line that Burke works for respondent. Nevertheless, there is no evidence that Burke was “engaged in investigating or prosecuting functions in connection with the case . . . or a factually related case.” MCL 24.282. Therefore, the evidence does not show the existence of error. *Shafier*, 483 Mich at 219.

Second, petitioner fails to demonstrate that the e-mail affected his substantial rights. Petitioner claims that the e-mail contents had an effect on referee Martell’s recommendation, but petitioner failed to attach the recommendation or quote the affected parts. In other words, without the recommendation the Court lacks evidence to conclude that the communication prejudiced petitioner’s “substantial rights.” *Shafier*, 483 Mich at 219. On the same note, petitioner’s argument that the e-mail violated his due process right to “a fair and impartial tribunal,” *Cain v Mich Dep’t of Corrections*, 451 Mich 470, 499; 548 NW2d 210 (1996), is unsubstantiated because petitioner failed to explain how the e-mail communication resulted in the referee being impartial.

In sum, the certified record before us contains no evidence of improper ex parte communication between the hearing referee and another of respondent’s employees. Thus, no error, plain or otherwise, is shown.

## B. NOTICE

Petitioner also argues that respondent failed to provide him adequate notice of its decision and order to be appealed in violation of his right to procedural due process. Because of this, petitioner argues, he could not timely file an appeal to the Tax Tribunal. Once more, we disagree.

Again, procedural due process dictates that parties are entitled to notice and an opportunity to be heard, *Hughes*, 284 Mich App at 69, which includes “the right to notice of that opportunity,” *Bickler v Dep’t of Treasury*, 180 Mich App 205, 210-211; 446 NW2d 644 (1989). In keeping with this principle, the Michigan Administrative Code requires respondent to send copies of decisions and orders to taxpayers “by certified mail if the taxpayer is not represented” by counsel. Mich Admin Code, R 205.1011(4). Following the issuance of a decision and order, respondent must also send taxpayer a “notice of final assessment [that] include[s] a statement advising the taxpayer of the right to appeal.” R 205.1011(5). This information must be sent “by

certified mail addressed to the last known address of the taxpayer,” or delivered personally. MCL 205.28(1)(a).

Actual notice is not required, *PIC Maintenance, Inc v Dep’t of Treasury*, 293 Mich App 403, 410; 809 NW2d 669 (2011), but in absence of actual notice, the notification method must satisfy due process, *Sidun v Wayne Co Treasurer*, 481 Mich 503, 510; 751 NW2d 453 (2008). The method used must be “ ‘reasonably certain to inform’ ” the taxpayer. *Id.*, quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 315; 70 S Ct 652; 94 L Ed 865 (1950). The method’s reasonableness depends on the information known by the government. *Id.* at 511.

The record indicates that respondent issued its final decision and order on April 30, 2014, by letter addressed to “PO Box 191, Roscommon, MI 48653.” The letter also indicated that it was being sent by “**CERTIFIED MAIL – RETURN RECEIPT REQUESTED.**” The record contains a certified mail receipt that was returned to respondent as unclaimed on May 20, 2014, after two attempts at delivery on May 5 and 10, 2014. Petitioner used the PO Box 191 Roscommon address in his tax appeal petition and in at least one other written communication to the Tribunal. There is no indication that the address was invalid nor is there evidence that petitioner requested correspondence from the Tribunal be sent elsewhere. We therefore conclude that the decision and order was sent to the last known address of the taxpayer in compliance with MCL 205.28(1)(a) and R 205.1011(4), (5). On this record, plain error is not shown.

Affirmed.

/s/ Henry William Saad  
/s/ Cynthia Diane Stephens  
/s/ Colleen A. O'Brien